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Stanley Martin Redd, Sheila M. Redd, His Wife; Sterling Hardson Redd, Jill D. Redd, His Wife; Paul Dutson And Donna Dutson, His Wife v. Western Savings & Loan Company : Addition of New Authorities To Brief of Appellants

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Richard W. Giaque and James R. Holbrook; Attorneys for Respondent Neil R. Sabin; Attorney for Appellants

Recommended Citation

Supplemental Submission, *Redd v. Western Savings & Loan*, No. 17231 (Utah Supreme Court, 1981).
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FILED

JUN 22 1981

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

STANLEY MARTIN REDD,
SHEILA M. REDD, his wife;
STERLING HARDSON REDD,
JILL D. REDD, his wife;
PAUL DUTSON and DONNA
DUTSON, his wife,

Plaintiffs-Appellants,

v.

WESTERN SAVINGS & LOAN
COMPANY,

Defendant-Respondent.

RESPONDENT'S RESPONSE TO
ADDITION OF NEW AUTHORITY
TO BRIEF OF APPELLANTS

Case No. 17231

The appellants have submitted the case of Panko v. Pan American Federal Savings and Loan Association, 1 Civil 47918 (Cal. App., filed June 1, 1981) in support of their argument that the rationale of Wellenkamp v. Bank of America, 148 Cal. Rptr. 379, 582 P.2d 970 (1978) is applicable to commercial property. At the most, Panko illustrates that there is a split of authority in California's courts of appeal as to enforcement of due-on-sale clauses on commercial property. Cf. Medovoi v. American Savings and Loan Association, 89 Cal. App. 3d 875, 152 Cal. Rptr. 572 (1979). Furthermore, even if the California Supreme Court ultimately holds that Wellenkamp is applicable to commercial property, Respondent's

Brief and the most recent case law explicitly ruling on the enforceability of due-on-sale clauses demonstrate that the Wellenkamp decision is not economically, logically, or legally sound.

The appellants also submit Panko in support of their argument that federal regulations do not preempt state law. Appellants have mischaracterized respondent's argument. Respondents have never asserted that the laws of Utah are preempted by federal laws to allow enforcement of the due-on-sale clause.

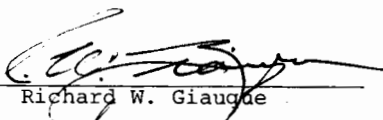
The applicable Utah law authorizing enforcement of due-on-sale clauses in Utah is found at Sections 7-7-5.1 and 7-13-74, Utah Code Annotated. These sections simply authorize state-chartered savings and loan associations to make the same kind of loans as federally chartered savings and loans in Utah are authorized to provide (unless contrary rules are promulgated by the State Insurance Commissioner). The Panko case itself recognizes that federally chartered savings and loans are authorized to write loans with due-on-sale clauses pursuant to 12 C.F.R. § 545.8-3(f). See Panko, supra, at 9-10. Therefore, pursuant to Sections 7-7-5.1 and 7-13-74, Utah savings and loans are authorized to enforce due-on-sale provisions. There is no issue of federal preemption in the case at bar, and any reliance upon Panko by

the appellants in regards to a preemption argument is misplaced.

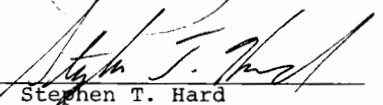
DATED this 19th day of June, 1981.

GIAUQUE, HOLBROOK, BENDER
& GURMANKIN, P.C.

By


Richard W. Giaque

By


Stephen T. Hard

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Respondent's Response to Addition of New Authority to Brief of Appellants was mailed, postage prepaid, to Neil R. Sabin of Stringham, Larsen, Mazuran & Sabin, 200 North Main Street, Suite 200, Salt Lake City, Utah 84103, this 19th day of June, 1981.

